

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND, NORTHERN DIVISION

DUANE SCHWEITZER,

Plaintiff,

v.

CANNONDALE CORPORATION,

Defendant.

CIVIL NO.: WDQ-07-1983

* * * * *

MEMORANDUM OPINION

Duane Schweitzer sued Cannondale Corporation ("Cannondale") for negligence and strict liability. Pending is Schweitzer's motion to remand. For the following reasons, Schweitzer's motion will be denied.

I. Background

On July 10, 1999 Schweitzer was injured while operating a Cannondale SuperV2000 bicycle designed and sold by Cannondale. Compl. ¶¶ 2-3. Schweitzer sued Cannondale on July 26, 2002 in Baltimore City Circuit Court seeking damages of \$74,000. On February 3, 2003, the United States Bankruptcy Court for the District of Connecticut placed Cannondale in Chapter 11 bankruptcy which automatically stayed the civil proceeding. See 11 U.S.C. § 362(a) (2006). On March 21, 2003, the circuit court ordered the case stayed. Paper No. 6.

On May 17, 2007, the bankruptcy court lifted the stay. On

June 4, 2007, Schweitzer filed a "Motion to Amend the Addendum Clause of the Complaint" which increased the addendum from \$74,000 to \$300,000. Paper No. 13. Schweitzer then filed a notice of lifting of the bankruptcy stay on June 5, 2007 and sought a new scheduling order. Paper No. 12. On July 14, 2007, the circuit court lifted the stay, and on July 23, 2007, Cannondale removed the case to the United States District Court for the District of Maryland claiming diversity jurisdiction under 28 U.S.C. § 1332 because the amount in controversy exceeded \$75,000. Paper No. 1.

II. Analysis

Schweitzer contends that the case should be remanded to circuit court because Cannondale's notice of removal was untimely. Schweitzer argues that the time for Cannondale to file its notice of removal began on June 4, 2007, when Cannondale was able to ascertain the damages claimed. Pl.'s Supp. Mem. ¶ 8. Cannondale counters that its notice of removal was timely because it could not take action in the case until the circuit court lifted the stay. Cannondale asserts that any removal attempt before July 14, 2007 would have been premature.

Cannondale's notice of removal was timely. A defendant has 30 days to file a notice of removal, starting from the date the defendant receives the complaint or from the date "it may first be ascertained that the case is one which is or has become

removable." 28 U.S.C. § 1446(b) (2006); *see also Lovern v. Gen. Motors Corp.*, 121 F.3d 160, 162 (4th Cir. 1997). There was no removal jurisdiction until June 4, 2007, when Schweitzer amended the complaint and increased the amount in controversy to \$300,000. The case was stayed pending the outcome of Cannondale's bankruptcy proceedings; therefore, the 30-day period for filing a notice of removal did not begin until the stay was lifted on July 14, 2007. Since Cannondale timely filed its notice of removal on July 25, 2007, Schweitzer's motion to remand will be denied.

III. Conclusion

For the stated reasons, Schweitzer's motion will be denied.

October 10, 2007
Date

/s/
William D. Quarles, Jr.
United States District Judge